

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Nebraska Public Service        ) Application No. NUSF-50  
Commission, on its own motion, to make            )  
adjustments to the universal service fund         )  
mechanism established in NUSF-26.                 )

In the Matter of the Commission, on its own        ) Application No. NUSF-4  
motion, seeking to determine the level of the     )  
fund necessary to carry out the Nebraska         )  
Telecommunications Universal Service Fund        )  
Act.    )

**REPLY TESTIMONY OF KEN PFISTER  
ON BEHALF OF THE RURAL INDEPENDENT COMPANIES**

1    **Q.     Please State your Name, Employer, Business Address and Telephone**  
2       **Number.**

3  
4    A.     My name is Ken Pfister. I am employed with Great Plains Communications. My  
5       business address is 1600 Great Plains Centre, P.O. Box 500, Blair, Nebraska  
6       68008. My business telephone number is (402) 426-6413.

7  
8    **Q.     Are you the same Ken Pfister that submitted pre-filed direct testimony in this**  
9       **proceeding?**

10  
11   A.     Yes.

12  
13   **Q.     Are you offering this reply testimony on behalf of the same Companies that**  
14       **you identified in connection with your direct testimony?**

15  
16   A.     Yes, I am testifying on behalf of the Nebraska Rural Independent Telephone  
17       Companies (to be referred to as the "Companies").<sup>1</sup>

18  
19   **Q.     What is the purpose of your reply testimony?**

20  
21   A.     To respond to certain of the issues and statements of position raised in the direct  
22       testimony filed by interested parties in this proceeding. In this Reply Testimony I

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<sup>1</sup> The Companies are: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco Inc., Consolidated Telecom, Inc., Consolidated Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco.

1 will refer to the plan described in the Commission's Order entered in this docket  
2 on August 29, 2006 that outlines reductions in NUSF support as the "Proposal."

3  
4 **I. RATIONALE FOR REDUCTIONS IN PERMANENT NUSF SUPPORT**

5  
6 **Q. In your Direct Testimony you stated that no changes in the legal principles or**  
7 **policy rationale that underpin the Permanent NUSF Plan have occurred to**  
8 **justify the reductions in NUSF support set forth in the Proposal. Has any**  
9 **party filed direct testimony that disputes or challenges this stated position?**

10  
11 **A.** I have reviewed all direct testimonies filed in this docket and I do not find any  
12 information in any of the filed direct testimonies that identifies any change in the  
13 Nebraska Telecommunications Universal Service Fund Act ("NTUSFA"), any  
14 policy determination or regulation made or adopted by this Commission or any  
15 judicial decision that alters or amends the principles and policies that were in  
16 place when this Commission entered its Order dated November 3, 2004 in  
17 Application NUSF-26 that established the Permanent NUSF Plan.

18  
19 I believe that the inescapable conclusion is that the proposed changes to the  
20 Permanent NUSF Plan and the resulting reductions in the NUSF High Cost  
21 Program support that would result from such changes are motivated by a single  
22 consideration, namely, matching support payments from the NUSF with receipts  
23 into the NUSF resulting from a reduced surcharge. To proceed with the Proposal  
24 would be contrary to the policies and principles of the NTUSFA and the  
25 Commission-established goals for the NUSF as identified in Application NUSF-  
26 26.<sup>2</sup>

27  
28 **II. IMPACT OF THE PROPOSAL ON SUFFICIENCY AND**  
29 **PREDICTABILITY**

30  
31 **Q. In your Direct Testimony you stated that the proposed reductions in NUSF**  
32 **support were inconsistent with the statutory principles of predictability and**  
33 **sufficiency that are required by the NTUSFA (Section 86-323(5)). Is the**  
34 **direct testimony of any other witness supportive of this position?**

35  
36 **A.** Several witnesses have addressed the issue as to whether the proposed changes to  
37 the NUSF support would violate the statutory requirements that the NUSF be  
38 predictable and sufficient, including Peter B. Copeland, Mark D. Harper and Dale  
39 Musfeldt. Embarq's witness, Mr. Harper, states that the currently authorized  
40 NUSF surcharge is not adequate to provide "sufficient revenues to continue  
41 supporting basic local residential telephone service in high cost areas of Nebraska  
42 at the levels produced by the currently authorized NUSF distribution process."<sup>3</sup>

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<sup>2</sup> In the Comments of the Rural Independent Companies filed herein on August 17, 2006, several of the goals for the NUSF that were identified by the Commission in Application No. NUSF-26, Progression Order No. 2 (entered Aug. 27, 2002) were discussed at pages 7-9.

<sup>3</sup> Direct Testimony of Mark D. Harper at page 3.

1 Nebraska Technology & Telecommunications' witness, Dale Musfeldt,  
2 specifically cites to Section 86-823(5) and its requirement that the NUSF be  
3 predictable. Mr. Musfeldt offers the opinion that "[w]hen considering the issues  
4 raised in this Docket, the Commission must adopt those policies . . . that help the  
5 Commission reach the goal of NUSF predictability mandated by the Nebraska  
6 Legislature."<sup>4</sup>

7  
8 **Q. In his Direct Testimony, Mr. Pursley states that he believes that even with**  
9 **the implementation of the Proposal, "the NUSF remains sufficient for**  
10 **carriers, consistent with state and federal law." What is your reaction to this**  
11 **statement?**

12  
13 **A.** Since Mr. Pursley has merely stated his belief without providing any data to  
14 support that belief, I would submit that this statement of opinion is not  
15 particularly credible or persuasive. I believe this is especially true in light of the  
16 finding made by the Commission in its November 3, 2004 Order entered in  
17 NUSF-26 that "the baseline support allocation is sufficient." I do not believe it is  
18 reasonable to conclude that a proposed reduction of support of \$23 million in one  
19 year, which is a reduction of 34.3 percent in the current NUSF support level, can  
20 equate to sufficient support given the foregoing finding of the Commission in  
21 NUSF-26.

22  
23 **Q. Mr. Pursley also offers his opinion that the amount of NUSF support under**  
24 **the Proposal "will be sufficient to preserve and advance universal service in**  
25 **the rural areas the way it is intended." Do you agree with this conclusion?**

26  
27 **A.** I absolutely do not agree. As I noted in my direct testimony on page 8, this  
28 statutory requirement that universal service support be sufficient will clearly be  
29 violated if NUSF cuts were made as proposed.

30  
31 **III. PROPOSED REVISION OF RATE OF RETURN CAP FROM 12% to**  
32 **11.25%**

33  
34 **Q. In your direct testimony you did not address the Companies' position**  
35 **regarding the revision of the rate of return cap from 12% to 11.25% under**  
36 **the terms of the Proposal. What is the Companies' position on this issue?**

37  
38 **A.** Several representatives of other companies filing testimony in this docket have  
39 spoken against this aspect of the Proposal. Citizens' representative, David  
40 Ruhland, expressed disagreement with the proposed rate of return reduction.<sup>5</sup>  
41 Similarly, Embarq's witnesses, Mr. Harper and Dr. Staihr, oppose any reduction  
42 in the current rate of return.<sup>6</sup> In fact, in support of his position that there should

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<sup>4</sup> Direct Testimony of Dale Musfeldt at page 6.

<sup>5</sup> Direct Testimony of David Ruhland at pages 5-6.

<sup>6</sup> Direct Testimony of Mark D. Harper at pages 9-10 and Direct Testimony of Brian K. Staihr at pages 13-18.

1 be no earnings benchmark regarding the NUSF, Mr. Harper points out that the  
2 Texas and Kansas funds have no earnings benchmarks.

3  
4 The existing 12% rate of return cap was approved by this Commission in its  
5 Findings and Conclusions entered in Application No. C-1628 on January 13,  
6 1999.<sup>7</sup> Over the course of the more than seven years that have passed since the  
7 entry of this Order, it is widely acknowledged that competition has increased, and  
8 the operation of rural local exchange carriers has become increasingly  
9 challenging. As Dr. Staihr describes in his direct testimony, the return reasonably  
10 expected by an investor investing in a company relates to the risk associated with  
11 the company's business activities.<sup>8</sup> I concur with his assessment. It is undeniable  
12 that the risks associated with the provision of basic local exchange service in  
13 Nebraska have increased and not decreased in recent years. In the absence of any  
14 evidence showing that investment risks have been reduced, the Commission  
15 should not reduce the rate of return cap.

16  
17 When the Commission approved the NUSF Support Allocation Methodology  
18 (SAM) on November 3, 2004, establishing the permanent NUSF mechanism in  
19 Application No. NUSF-26, the appropriateness of a 12% rate of return cap was  
20 reaffirmed. In my opinion, there have been no developments within the local  
21 exchange carrier industry or in a wider context that justify a reduction of the  
22 allowable rate of return used in connection with the NUSF. I submit that the only  
23 reason that this change is now being advanced in the Proposal is for the purpose  
24 of incrementally reducing NUSF support payments in an effort to balance NUSF  
25 receipts and disbursements. As I stated in my Direct Testimony and reiterate in  
26 this Reply Testimony, the focus of the Commission must be primarily on  
27 administration of the NUSF in accordance with the policies and principles of the  
28 NTUSFA, and only when the directives of the NTUSFA are met should the  
29 Commission's focus be to balance NUSF receipts and disbursements in a manner  
30 that sustains the financial viability of the NUSF.

31  
32 In the Companies' Comments filed in this Docket on April 14, 2006 in response  
33 to Progression Order No. 1, we presented a discussion of further reasons that the  
34 Commission should maintain the current 12% cap of rate of return and not  
35 decrease such cap to 11.25%.<sup>9</sup> To the extent that there is an implicit or explicit  
36 suggestion that the Proposal merely seeks to move the NUSF rate of return cap to  
37 an 11.25% level that mirrors the Federally-authorized rate of return, it should be  
38 borne in mind that these percentages represent different standards. The 11.25%  
39 rate of return prescribed by the FCC is used to set rates such that rate of return  
40 carriers are guaranteed to receive this return on their investment and expense  
41 base. On the other hand, the 12% rate of return cap set by this Commission as a

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<sup>7</sup> *In the Matter of the Nebraska Public Service Commission, on its own Motion, Seeking to Conduct an Investigation into Intrastate Access Reform*, Application No. C-1628, Findings and Conclusions (Jan. 13, 1999) at page 7.

<sup>8</sup> Direct Testimony of Dr. Brian K. Staihr at pages 15-16.

<sup>9</sup> Comments of the Rural Independent Companies filed herein on April 14, 2006 at pages 16-21.

1 part of its Order entered in Application No. NUSF-26 sets a maximum amount of  
2 earnings that carriers are allowed. Thus, it is appropriate that the NUSF rate of  
3 return cap should remain somewhat greater than the federal rate of return because  
4 the NUSF cap serves to limit earnings, not to guarantee that any given carrier will  
5 receive a certain level of earnings. The Companies support the positions of the  
6 parties that have filed direct testimony urging the Commission to maintain the  
7 12% rate of return cap.  
8

9 **IV. CREATION OF A SEPARATE WIRELESS MOBILITY FUND**

10  
11 **Q. What is the position of the Companies with regard to the establishment of a**  
12 **separate wireless mobility fund supported by the NUSF?**  
13

14 **A.** The positions of the Companies on this subject were set forth in Comments filed  
15 with the Commission in Application No. NUSF-48 on September 9, 2005.  
16 In the Commission's Order entered in Application NUSF-48 on October 18, 2005,  
17 the Commission ordered that "a separate docket shall be initiated to explore and  
18 establish the proper interim procedures and method for determining, allocating  
19 and distributing support; eligibility standards for support, and any other issues  
20 related to the provision of the dedicated wireless support."<sup>10</sup> If and when the  
21 Commission opens such a separate docket, the Rural Companies will actively  
22 participate and will present their points of advocacy to the Commission. Until  
23 that occurs, the Rural Companies believe that it is premature for the Commission  
24 to reserve any amount for a possible future funding program that is yet to be  
25 established.  
26

27 **V. COORDINATION OF ANY PROPOSED CHANGES TO THE**  
28 **PERMANENT NUSF PLAN WITH PROPOSED CHANGES TO FEDERAL**  
29 **USF SUPPORT**  
30

31 **Q. Mr. Pursley's position, as stated in his Direct Testimony, is that the**  
32 **Commission "does not have the luxury to wait until the FCC acts" in**  
33 **disposing of the issues in this docket. What is your response to this**  
34 **statement?**  
35

36 **A.** I agree that the Commission needs to take action to address the apparent  
37 discrepancy between NUSF revenues and NUSF support disbursements.  
38 However, I believe that Mr. Pursley's urging that the Commission "act quickly in  
39 this proceeding to make the necessary cuts to the amount of support distributed"  
40 is misguided for all of the reasons that I have presented in my direct testimony  
41 and this reply testimony. Rather, the Companies urge the Commission to revise  
42 the NUSF surcharge amount to at least 6.95%, which is the level of the surcharge  
43 that existed up to October 1, 2005, and to implement such surcharge revisions as  
44 soon as possible.  
45

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<sup>10</sup> *Id.*, Order (Oct. 18, 2005) at page 2.

1 In addition, the Companies continue to maintain that the FCC's disposition of  
2 pending intercarrier compensation issues, particularly those relating to the  
3 Missoula Plan, is highly relevant to actions that the Commission may take  
4 regarding the NUSF. In my Direct Testimony at pages 9 and 10, I discussed the  
5 most salient aspects of the Missoula Plan that would impact the NUSF. While I  
6 do not recommend that the Commission take no action pending the FCC's  
7 consideration of the Missoula Plan, I do continue to urge the Commission to  
8 refrain from making major changes to the permanent NUSF mechanism such as  
9 those set forth in the Proposal. Changes to Federal support mechanisms of the  
10 magnitude being considered by the FCC relating to the Missoula Plan would  
11 require further changes in the permanent NUSF mechanism in order to maintain  
12 sufficient cost recovery and thus fulfill the statutory purposes and policies of the  
13 NTUSFA and the Commission-established NUSF goals.

14  
15 **VI. CONCLUSION**

16  
17 **Q. Please summarize the positions of the Rural Independent Companies in**  
18 **response to the Proposal.**

19  
20 **A.** First and foremost, the Rural Independent Companies recommend that the  
21 Commission take action to raise the NUSF surcharge to an amount that complies  
22 with the statutory directive that NUSF support is "specific, sufficient and  
23 predictable." As Ms. Vanicek testified, a surcharge in a range of 7.45% to 7.75%  
24 is required to restore NUSF distributions to the 2006 level of NUSF support  
25 payments.

26  
27 Second, the Rural Independent Companies contend that there is no legislative,  
28 judicial or regulatory basis that supports or authorizes the one-year reduction in  
29 permanent NUSF support of approximately \$23 million or more than 34%. The  
30 sole rationale for such reduction is the necessity to balance NUSF receipts with  
31 NUSF support payments. Balancing the NUSF in the manner set out in the  
32 Proposal violates the requirements of the NTUSFA.

33  
34 Third, the Rural Independent Companies submit that the proposed Federal  
35 Universal Service Fund imputation is inappropriate and implementation thereof  
36 would deprive carriers of the option to elect to have rate of return computed on  
37 either a total company, jurisdictional (intrastate) or supported services basis as  
38 allowed by the Commission's November 3, 2004 Order in NUSF-26.

39  
40 Fourth, the Rural Independent Companies oppose the proposed increase in the  
41 rural local service benchmark rate for the reasons that the proposed \$19.95 per  
42 month rural rate is not comparable with the proposed \$17.95 per month urban rate  
43 as required by the NTUSFA and that such increase may be in conflict with the  
44 affordability requirements of the NTUSFA.

1 Fifth, the Rural Independent Companies support efforts to broaden the assessment  
2 base for NUSF to include revenues derived from the provision of interconnected  
3 voice over Internet protocol services.  
4

5 Sixth, the Rural Independent Companies submit that the Commission should  
6 maintain the 12% rate of return cap currently in effect for the computation of  
7 NUSF support and not reduce such cap to the 11.25% federal rate of return  
8 guarantee since market conditions for local exchange carriers do not justify such a  
9 reduction.  
10

11 Finally, the Rural Independent Companies encourage the Commission to  
12 coordinate any proposed changes to the Permanent NUSF Plan with proposed  
13 changes to the Federal USF program.  
14

15 Q. **Does this conclude your testimony?**

16  
17 A. Yes, it does.